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No.

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1991

UNITED STATES OF AMERICA, PETITIONER

v.

A PARCEL OF LAND, BUILDINGS, APPURTENANCES AND
IMPROVEMENTS KNOWN AS 92 BUENA VISTA AVE-
NUE, RUMSON, NEW JERSEY, AND BETH ANN
GOODWIN

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

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QUESTION PRESENTED

Whether a person who receives a gift of money derived from drug trafficking and uses that money to purchase real property is entitled to assert an "innocent owner" defense in an action seeking civil forfeiture of the real property.

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OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-16a) is reported at 937 F.2d 98. The opinions of the district court denying respondent Goodwin's motion for summary judgment (App., *infra*, 17a-35a) and certifying certain questions for interlocutory appeal (App., *infra*, 38a-45a) are reported, respectively, at 738 F. Supp. 854 and 742 F. Supp. 189.

JURISDICTION

The judgment of the court of appeals was entered on June 17, 1991. A petition for rehearing was denied on August 13, 1991 (App., *infra*, 46a-47a). The

jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 511 of the Controlled Substances Act of 1970, 21 U.S.C. 881, is set forth in an appendix (App., *infra*, 48a-57a).

STATEMENT

In 1982, respondent Beth Ann Goodwin purchased a house in New Jersey. Joseph Brenna, with whom she shared the house, provided more than \$200,000 of the purchase price. In this action, the government has shown probable cause to believe that Brenna obtained those funds from illegal drug transactions, and it is seeking civil forfeiture of the house under 21 U.S.C. 881(a)(6). Goodwin claims that the funds were a gift to her from Brenna and that she was unaware that the money was derived from drug dealing. The court of appeals held that those contentions, if proven, would support an "innocent owner" defense to forfeiture. The government's position is that the United States acquired title to the money used to buy the house when Brenna committed the offenses giving rise to the forfeiture and, consequently, that Goodwin never became an owner of the money or the house.

1. Under 21 U.S.C. 881, assets that have been used in or derived from drug trafficking are subject to forfeiture. In particular, Section 881(a)(6) provides:

The following shall be subject to forfeiture to the United States and no property right shall exist in them: * * *

(6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of [21 U.S.C. 801-904], all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

The defense recognized by the proviso in Section 881(a)(6) has come to be known as the "innocent owner" defense.

In accordance with the "relation-back" doctrine that has long been embodied in federal forfeiture statutes, see *United States v. Stowell*, 133 U.S. 1, 16-17 (1890), the United States acquires title to property that is forfeited under Section 881(a)(6) as of the time of the act triggering the forfeiture. Under 21 U.S.C. 881(h), "[a]ll right, title, and interest in property described in" Section 881(a) "vest[s] in the United States upon commission of the act giving rise to forfeiture * * *." This case presents the question whether a person who obtains an interest in drug proceeds only after the act triggering a forfeiture is eligible for Section 881(a)(6)'s innocent owner defense.

2. A forfeiture mandated by Section 881 is enforced by means of an *in rem* action against the assets in question. In 1989, the government commenced this suit against the property at 92 Buena Vista Ave-

nue in Rumson, New Jersey. Respondent Goodwin is the titleholder of record to the property, which consists of a house and its lot. The complaint alleges that the property was purchased with more than \$200,000 provided by Joseph Brenna; that those funds were proceeds traceable to illegal drug transactions; and, consequently, that the property is subject to forfeiture under 21 U.S.C. 881(a)(6). The district court determined that the complaint was supported by probable cause and issued a warrant authorizing the seizure of the property. Goodwin continues to occupy in the house under an occupancy/tenant agreement with the Marshals Service. C.A. App. 54a-55a, 656a-663a.

Goodwin answered the complaint and asserted a claim to the property. In motions to dismiss the action and for summary judgment, she argued, among other things, that (1) the seizure was illegal because there was no probable cause to believe that the property was purchased with funds derived from drug transactions and (2) she was an innocent owner of the property within the meaning of Section 881(a)(6). In support of her innocent owner defense, Goodwin asserted that she lived with Brenna from approximately 1981 through 1987 in "an intimate personal relationship" and that Brenna supported her and her children until the two separated in 1987. Goodwin also claimed that the funds used to purchase the house were a gift from Brenna and that she was the sole owner of the property. She denied having any knowledge that the money was derived from illegal drug transactions. C.A. App. 568a-570a.

a. The district court denied Goodwin's motions. The court first found "that the government has demonstrated that probable cause exists to believe that

the premises are traceable to drug transactions." App., *infra*, 21a. The court relied on the fact that a federal grand jury in the Southern District of Florida has indicted Brenna for drug offenses occurring during the period from 1982 to 1988 and has charged that the property at issue here and some \$24,000,000 in cash are proceeds of those violations.¹ The probable cause supporting that indictment, the district court indicated, would also support seizure of the property. The court also noted that a DEA agent had verified the allegations of the forfeiture complaint, that an informant had advised the government that the house was purchased with drug proceeds, and that neither Brenna nor Goodwin had filed income tax returns from 1978 through 1985. *Id.* at 21a-23a.

With respect to the funds used to purchase the house, the district court cited deposition testimony by Shaun Murphy, a British Virgin Islands accountant. By his own account, Murphy has specialized in making investments in a manner calculated to shield his clients' identities. To that end, Murphy gave his clients code names and established corporations, with nominees as shareholders and directors, to serve as investment vehicles. It was Murphy's practice not to make inquiries regarding the source of his clients'

¹ C.A. App. 19a-20a. The Florida indictment, which was returned in April 1990, charges Brenna with two counts of violating the CCE statute (21 U.S.C. 848); one count of conspiring to import in excess of 1,000 kilograms of marijuana (21 U.S.C. 963); and four counts of importing in excess of 1,000 kilograms of marijuana (21 U.S.C. 952(a)). C.A. App. 39a-48a. Because he is a fugitive, Brenna has not been brought to trial on this indictment.

funds. He often picked up money in St. Thomas, in the U.S. Virgin Islands, and carried it to the British Virgin Islands, thereby violating currency reporting requirements. Murphy also shredded all "wastepaper" reflecting his transactions on a daily basis. Brenna was introduced to Murphy in 1982. Brenna (whom Murphy knew as Joseph Crawford or Joseph Cavanaugh) was assigned the code name "Joseph Smith" and the phrase "Mohave is warm this time of year" to identify himself over the telephone. In August and October 1982, Brenna made two deliveries of cash, totalling \$470,000, to Murphy. In accordance with Brenna's instructions, Murphy wired \$216,000 of that amount to a law firm in New Jersey. Those funds were used to purchase the property whose forfeiture is sought in this case. App., *infra*, 23a-24a; see C.A. App. 77a-88a, 98a-100a, 167a-173a.

Those circumstances and others, the district court concluded, "provide sufficient basis for probable cause to believe that the premises were purchased with proceeds traceable to drug transactions." App., *infra*, 24a.

b. The district court also rejected Goodwin's innocent owner defense. Noting that Goodwin had characterized the funds used to buy the house as a gift, the court held that "where, as here, the government has demonstrated probable cause to believe that property is traceable to proceeds from drug transactions, the innocent owner defense may only be invoked by those who can demonstrate that they are bona fide purchasers for value." App., *infra*, 27a. The court relied upon the language of the statute, the analogous criminal forfeiture statute, principles of property law, and common sense. *Id.* at 28a-29a. It defies belief, the court declared, "that

Congress intended for the innocent owner exception to permit a drug dealer to avoid the impact of the forfeiture statute by disbursing the proceeds from his drug transactions to 'innocent' friends, family or other random recipients of the trafficker's benevolence." *Id.* at 29a.

Goodwin moved for leave to pursue an interlocutory appeal under 28 U.S.C. 1292(b). The district court certified four questions for appeal, one of which was (App., *infra*, 45a):

Whether an innocent owner defense may be asserted by a person who is not a bona fide purchaser for value concerning a parcel of land where the government has established probable cause to believe that the parcel of land was purchased with monies traceable to drug proceeds[.]

3. The court of appeals answered that question in the affirmative, holding that "Goodwin need not be a bona fide purchaser for value to raise an innocent owner defense pursuant to section 881(a)(6)." App., *infra*, 8a. The court reasoned that "the plain language of the innocent owner provision speaks only in terms of an 'owner' and in no way limits the term 'owner' to a bona fide purchaser for value." *Id.* at 7a. The court found additional support for that interpretation in the statute's legislative history. "Limiting the term 'owner' to a bona fide purchaser for value and thereby excluding a recipient of a gift from being considered an 'owner,'" the court said, "would contravene the express legislative intent that we interpret 'owner' broadly." *Ibid.* The court also attributed significance to the fact that the statute providing for criminal forfeitures in drug cases, 21 U.S.C. 853(c), includes an exception for property transferred to bona fide purchasers. The absence of

a similar provision in Section 881, the court concluded, indicated that "Congress intended to omit the bona fide purchaser for value requirement in that section." App., *infra*, 8a.

The court acknowledged (App., *infra*, 8a) that the government's position—"that Goodwin could never have been an 'owner' because at the time of the drug transactions, all right, title, and interest in the proceeds from the drug transactions vested in the United States" under 21 U.S.C. 881(h)—was consistent with the Fourth Circuit's en banc decision in *In re One 1985 Nissan, 300ZX [Nissan]*, 889 F.2d 1317 (1989). But the court ruled that Section 881(h) does not apply to property encompassed by the innocent owner defense. App., *infra*, 9a. In addition, the court suggested that the government's position "would essentially serve to emasculate the innocent owner defense," since "[n]o one obtaining property after the occurrence of the drug transaction—including a bona fide purchaser for value—would be eligible to offer an innocent owner defense on his behalf." *Ibid.*

The government petitioned for rehearing en banc. The court denied the petition over the dissents of four of its members. App., *infra*, 46a-47a.

REASONS FOR GRANTING THE PETITION

For nearly two centuries, this Court has interpreted forfeiture statutes to vest title to the assets in question in the United States at the time of the act giving rise to the forfeiture. The court of appeals' decision in this case creates a square conflict among the circuits as to the extent to which that "relation-back" doctrine governs forfeitures under 21 U.S.C. 881. In essence, the Third Circuit has held that the recipient of a gift of drug proceeds—which are subject to forfeiture at the time they are involved in an illegal transaction—may nonetheless qualify as an innocent owner of those assets. By contrast, the Fourth and Tenth Circuits have held that a person asserting an interest in drug proceeds acquired after title is vested in the United States is simply not an owner, innocent or otherwise. *Nissan*, 889 F.2d at 1321; *Eggleston v. Colorado*, 873 F.2d 242, 245-248 (10th Cir. 1989), cert. denied, 493 U.S. 1070 (1990). The language of Section 881 supports the latter interpretation, and none of the other considerations invoked by the Third Circuit justifies a different conclusion.

Congress has placed special emphasis on forfeitures as a means of combatting illegal drug trafficking. Unless overturned, the Third Circuit's decision will undercut the efficacy of the remedy that strikes most directly at the economic dimension of the drug trade.

1. Laws providing for forfeitures of property involved in criminal activity were among the earliest statutes enacted by Congress. See *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 683 (1974). From the outset, it has been "the settled doctrine" of this Court that

whenever a statute enacts that upon the commission of a certain act specific property used in or

connected with that act shall be forfeited, the forfeiture takes effect immediately upon the commission of the act; the right to the property then vests in the United States, although their title is not perfected until judicial condemnation; the forfeiture constitutes a statutory transfer of the right to the United States at the time the offense is committed; and the condemnation, when obtained, relates back to that time, and avoids all intermediate sales and alienations, even to purchasers in good faith.

United States v. Stowell, 133 U.S. at 16-17.²

This Court has applied that interpretation to a wide variety of forfeiture statutes. For instance, in *United States v. 1960 Bags of Coffee*, 12 U.S. (8 Cranch) 398 (1814), the Court rejected a contention by bona fide purchasers of coffee that a forfeiture under the Non-Intercourse Act of 1809 took effect only when the property in question was seized and condemned. "[T]he commission of the offence," this Court held, "marks the point in time on which the statutory transfer of right takes place." *Id.* at 405. The Court has adhered to that understanding of statutory forfeitures on many occasions.³ Re-

² Ironically, the entity that accountant Murphy created to conceal Brenna's assets was named "Stowell Investments, Limited." C.A. App. 168a-169a.

³ See, e.g., *The Brigantine Mars*, 12 U.S. (8 Cranch) 417 (1814); *Gelston v. Hoyt*, 16 U.S. (3 Wheat.) 246, 311 (1818); *Henderson's Distilled Spirits*, 81 U.S. (14 Wall.) 44, 56-58 (1872); *Thacher's Distilled Spirits*, 103 U.S. 679, 682 (1881). See also *Caldwell v. United States*, 49 U.S. (8 How.) 366, 381 (1850) (distinguishing between statutes that provide for forfeiture upon the doing of an act, in which case title relates back to the time of the act, and statutes that allow an election as to what property will be forfeited, in which case

cently, in *Caplin & Drysdale v. United States*, 491 U.S. 617, 627 (1989), the Court noted that the criminal drug forfeiture statute, 21 U.S.C. 853(c), "reflects the application of the long-recognized and lawful practice of vesting title to any forfeitable assets, in the United States, at the time of the criminal act giving rise to forfeiture."

Like the statutes at issue in *Stowell*, 1960 *Bags of Coffee*, and *Caplin & Drysdale*, Section 881(a)(6) specifies that drug proceeds shall be subject to forfeiture upon the commission of specified criminal activity. Consequently, the United States acquires title to forfeited drug proceeds at the time of the illegal transactions giving rise to those proceeds. Indeed, a 1984 amendment to the statute codifies the relation-back doctrine. Section 881(h) provides that "[a]ll right, title, and interest in property described in [Section 881(a)] shall vest in the United States upon commission of the act giving rise to forfeiture * * *."

the forfeiture occurs at the time of the election); *United States v. Grundy & Thornburgh*, 7 U.S. (3 Cranch) 337, 352-354 (1806) (same); *Ivers v. United States*, 581 F.2d 1362, 1367 (9th Cir. 1978); *Simons v. United States*, 541 F.2d 1351, 1352 (9th Cir. 1976); *Florida Dealers & Growers Bank v. United States*, 279 F.2d 673, 676, 677 (5th Cir. 1960); *Weathersbee v. United States*, 263 F.2d 324, 327 (4th Cir. 1958); *United States v. Pacific Finance Corp.*, 110 F.2d 732, 733 (2d Cir. 1940); *The Rethalulew*, 51 F.2d 646, 648 (9th Cir. 1931).

⁴ Although Section 881(a)(6) had been in effect for six years before Section 881(h) was added to the civil drug forfeiture statute, Congress understood that the relation-back principle codified in Section 881(h) was already "well established" in the law. S. Rep. No. 225, 98th Cong., 2d Sess. 215 (1984).

2. In this case, the Third Circuit held that the relation-back doctrine does not preclude an individual from acquiring an interest in drug proceeds, for purposes of the innocent owner provision of Section 881(a)(6), after the point at which the property has become subject to forfeiture. The Fourth and the Tenth Circuits have reached the opposite conclusion.

In *Nissan, supra*, the government sought civil forfeiture of more than \$1,000,000 in cash and other drug proceeds found at the residence of a deceased drug dealer. The executor of the drug dealer's estate argued that the deceased's heirs were "innocent owners" within the meaning of 21 U.S.C. 881(a)(6) because they had acquired their interest in the deceased's property without being aware of his illegal activities. The Fourth Circuit rejected that contention. The court explained that under the relation-back doctrine (889 F.2d at 1321):

White [the deceased drug dealer] could not have given good title to anyone while living, including his children. So White's death certainly does not permit any greater property interest to pass than White would have been able to pass if living. Neither White's personal representative nor his children had any claim to any interest in White's property prior to the acts of White which gave rise to forfeiture, and for that reason the innocent owner provision of the statute provides no relief for them.

Similarly, in *Eggleston v. Colorado*, 873 F.2d at 245-248, the Tenth Circuit held that the State of Colorado was not an innocent owner of drug proceeds by virtue of sales tax liens that arose only after the offenses triggering the forfeiture of that property.

The court explained that "[t]he innocent owner exception applies only to owners whose interest vests prior to the date of the illegal act that forms the basis for the forfeiture," and that title to the drug proceeds in question "vested in the United States through forfeiture prior to any ownership interest held by the State." *Id.* at 248.

Three other courts of appeals have stated—albeit without specific reference to the innocent owner defense—that the relation-back doctrine precludes third parties from acquiring enforceable interests in drug proceeds after the events subjecting the proceeds to forfeiture.⁵ Numerous district court decisions have

⁵ *United States v. Trotter*, 912 F.2d 964, 966 n.2 (8th Cir. 1990) (en banc) ("Since title vests 'in the United States' [at the time of the forfeiture], other creditors, including state agencies, may not claim any part of the funds if the government successfully obtains forfeiture."); *United States v. \$5,644,540.00 in U.S. Currency*, 799 F.2d 1357, 1364-1365 (9th Cir. 1986) (rejecting claims of finders of drug proceeds and State on the ground that "[a]ll right, title, and interest in the property vested in the government upon the act giving rise to forfeiture"); *United States v. One Single Family Residence*, 894 F.2d 1511, 1520 n.10 (11th Cir. 1990) (if a drug trafficker made a sale of drugs and used the proceeds to purchase a piece of real estate, the purchase would not give rise to a protected interest in favor of a spouse, since "[t]he trafficker ceased to hold title to the money before the property was purchased and could not divest the government by a subsequent exchange"); *United States v. Four Parcels of Real Property*, 879 F.2d 586, 590 n.11, 593-594 (11th Cir. 1989) ("all legal and equitable interests that arise subsequent to the proscribed activity which gave rise to the forfeiture are subordinated to that of the United States, despite that the holders of such interests had no actual notice that the property was subject to forfeiture"); *United States v. \$41,305.00 in Currency & Traveler's Checks*, 802 F.2d 1339, 1346 (11th Cir. 1986) (observing that judgment lien acquired after act giv-

reached conflicting conclusions on the applicability of the innocent owner defense to after-acquired interests in property involved in drug offenses.⁶ In this case, four members of the Third Circuit would have granted rehearing en banc to consider the relationship between the relation-back doctrine and the innocent owner defense.

ing rise to forfeiture did not give rise to enforceable interest in drug proceeds, since "[i]llegal use immediately vests title to the property in the sovereign, and cuts off the rights of third parties to obtain legally protectible interests in the property"). See also *United States v. 1977 Porsche Carrera 911*, No. 90-8638 (5th Cir. Oct. 30, 1991) (government acquired title to automobile before claimant's title was perfected under state vehicle title statutes).

⁶ Compare *United States v. All That Tract or Parcel of Land*, 762 F. Supp. 1479, 1484 (N.D. Ga. 1991) (claimants asserting interest in real property purchased with drug proceeds are not "owners" under 21 U.S.C. 881(a)(6)); *United States v. 5854 North Kenmore*, 762 F. Supp. 204, 208 (N.D. Ill. 1991) (relation-back doctrine bars claim to drug proceeds acquired by wife after illegal acts occurred); *United States v. 127 Shares of Stock in Paradigm Mfg.*, 758 F. Supp. 581, 584 (E.D. Cal. 1990) (since drug proceeds were forfeited before husband used them to purchase stock, wife acquired no interest in the stock); *United States v. One Parcel of Real Estate Property*, 660 F. Supp. 483, 487 (S.D. Miss.) ("Since the forfeiture actually occurs at the moment of the illegal use, no third party can acquire a legally cognizable interest in the property after the date of the illegal act which forms the basis of the forfeiture."), aff'd, 831 F.2d 566 (5th Cir. 1987), with *United States v. One Single Family Residence Located at 6960 Miraflores Ave.*, 731 F. Supp. 1563, 1569 (S.D. Fla. 1990) ("a bona fide purchaser is entitled to the protection of the innocent owner exception to * * * 21 U.S.C. § 881(a)(7)"); *United States v. One Single Family Residence*, 683 F. Supp. 783, 787 (S.D. Fla. 1988) ("the innocent owner exception to the forfeiture under section 881 also protects bona fide pur-

Further review is warranted to resolve the square conflict among the circuits regarding the applicability of Section 881(a)(6)'s innocent owner defense to after-acquired interests in property involved in drug offenses.

3. In the Third Circuit's view, the "plain language" of the innocent owner provision compels the conclusion that a person may become an owner of drug proceeds by means of a gift that occurs only after the proceeds are subject to forfeiture. See App., *infra*, 8a. We disagree.

a. Even when read in isolation, Section 881(a)(6) cannot fairly be read to confer a defense on a person whose interest in drug proceeds arises only after the unlawful act triggering a forfeiture. That Section authorizes forfeiture of specified categories of property involved in or traceable to illegal drug transactions, but provides that "no property shall be forfeited * * * to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner." As the district court recognized (App., *infra*, 28a), the innocent owner exception looks to the state of mind of the person who is the owner of the property at the time when an illegal act or omission triggers the forfeiture of the property. If the act or omission giving rise to a forfeiture is "committed or omitted without the knowledge or consent of" the person who owns the

chasers for value"). See also *United States v. Land*, 4629-4631 S. Carrollton Ave., 766 F. Supp. 527, 529 (E.D. La. 1991); *In re Certain Real Property Located at Lot 8*, 763 F. Supp. 150, 151 (W.D.N.C. 1991); *United States v. One Parcel of Real Property*, 743 F. Supp. 103, 106 (D.R.I. 1990), appeal dismissed, 936 F.2d 632 (1st Cir. 1991).

property, no forfeiture of that owner's interest occurs. If, on the other hand, the owner is aware of or consents to the illegal act, he forfeits his interest. At that point, under Section 881(a), the assets "shall be subject to forfeiture to the United States and no property right shall exist in them."

Section 881(a)(6) does not recognize the possibility that an owner who has lost all of his interest in drug-related property by reason of a forfeiture may reverse the forfeiture, and divest the United States of its "right, title, and interest" in the property, by means of a purported conveyance to a new "owner." The innocent owner defense—which turns on whether the actual drug offense was *committed* with the knowledge or consent of the owner of property involved in the offense—cannot meaningfully be applied to a person whose claim to ownership arises only after the commission of the offense is complete.⁷ By its terms, the innocent owner defense focuses on the state of facts at the time of the act or omission giving rise to a forfeiture. The knowledge of the

⁷ A variation on the facts of this case illustrates the point. Suppose that Brenna bought the house with drug proceeds before he even knew Goodwin; that Goodwin later met him, learned of his illegal drug business, and moved in with him; and that Brenna then gave Goodwin the house as a gift. On those facts, the house would be subject to forfeiture by virtue of acts and omissions occurring before Goodwin knew Brenna—and, if Goodwin qualifies as an "owner," those acts and omissions would seem to have been "committed or omitted without the knowledge or consent of that owner." The only way to avoid that obviously untenable result is to recognize, consistent with the relation-back doctrine, that a person claiming an after-acquired interest in drug proceeds is not an "owner" whose knowledge or consent is relevant to the forfeitures mandated by Section 881(a)(6).

owner at that point determines whether a forfeiture occurs. Such a forfeiture, once it takes effect, is final.

b. The relation-back provision, 21 U.S.C. 881(h), confirms that the forfeitures of drug proceeds prescribed by the statute occur at the point of the pertinent drug offense and are thereafter irreversible. Section 881(h) specifically provides that "[a]ll right, title, and interest in property described in [Section 881(a)] shall vest in the United States upon commission of the act giving rise to forfeiture * * *" (emphasis added). The title that the United States acquires under that provision is immediate, unqualified, and irrevocable. Section 881(h) leaves no room for the creation, by means of a later transfer, of an interest in drug proceeds that is superior to the title conferred on the government.

The Third Circuit attempted to circumvent the plain language of this provision by suggesting that an after-acquired interest in drug proceeds held by an innocent party is not "property described in" Section 881(a)(6). App., *infra*, 8a. That interpretation, although perhaps linguistically possible, cannot be reconciled with the substance of the relation-back provision. The sole purpose of Section 881(h)'s broad grant of title to the United States at the point when property is involved in an illegal drug transaction is to make clear that subsequent transfers to other persons do not pass good title. If it is to perform that function, the statute must contemplate that the property on which it operates will be identifiable at the point of the grant and that applicability of the statute (and the title it confers) will not be affected by later transfers.

Under the Third Circuit's interpretation of Section 881(a)(6), however, property on which Sec-

tion 881(h) has already operated can be pulled outside the statute retroactively by a transfer to an innocent third party. The upshot is that what is in plain statutory language an unqualified grant of "all right, title, and interest" to drug proceeds at the point of a drug offense is nullified, *nunc pro tunc*. Because the purpose of Section 881(h) is to defeat attempted transfers, the Third Circuit's interpretation effectively deprives that provision of its meaning. That interpretation does not represent a plausible accommodation of the innocent owner defense and the relation-back provision. Cf. *American Paper Institute v. American Electric Power Service Corp.*, 461 U.S. 402, 421 (1983) (statutes should not be construed so as to impute to Congress "a purpose to paralyze with one hand what it sought to promote with the other").⁸

c. The only reasonable reading of the innocent owner provision—in view of its own language, the

⁸ In terms of this case, the government has established probable cause to believe that the money Brenna transferred to Goodwin was derived from drug dealing. If it was, that money was, at the point of Brenna's unlawful acts, "property described in" Section 881(a)(6), and the United States acquired "all right, title, and interest" to it. Under the Third Circuit's view, however, the very same property would cease to be "property described in" Section 881(a)(6) if it were transferred to someone without knowledge of Brenna's illegal activities, and the title previously conferred on the United States would be revoked. If the property were returned to Brenna at a later point, the Third Circuit would presumably hold that the property was again subject to the relation-back provision and that the government's title had been restored. A statute that on its face grants unqualified title to specified property at a given point in time cannot reasonably be construed to embody such an in-again, out-again conception of ownership.

relation-back provision, and this Court's decisions in *Stowell* and other similar cases—is that the term "owner" refers only to those persons who are owners of the property at the point when it becomes subject to forfeiture. So construed, the statute provides relief to an important class of property owners. If, for instance, property owned by a non-participant in a drug transaction is exchanged for drugs or otherwise used to facilitate the transaction, that owner may assert an innocent owner defense to avoid forfeiture. At the point when drug proceeds are forfeited, however, all title vests in the United States, and no subsequent conveyance by the drug dealer can make anyone else an "owner" of the property.

4. This case does not involve a bona fide purchaser of drug proceeds. Nevertheless, the court of appeals relied upon its concern for that category of transferees of drug proceeds to support its interpretation. In particular, the court attached significance to the fact that the criminal drug forfeiture statute, 21 U.S.C. 853(c), provides an express exception for bona fide purchasers, and it suggested that the government's interpretation, as applied to bona fide purchasers, would "emasculate" the innocent owner exception. App., *infra*, 7a, 9a. Neither consideration justifies a departure from the result mandated by the text of the statute.

a. Section 853, which provides for forfeitures of drug-related assets on the basis of criminal convictions, was enacted in 1984, six years after Section 881(a)(6) was added to the civil forfeiture statute. At the time, there was some uncertainty as to whether the relation-back doctrine, which originated in the civil context, would carry over to criminal forfeitures. The Senate Committee Report explained (S.

Rep. No. 225, 98th Cong., 2d Sess. 196 (1984) (emphasis added)):

The problem of pre-conviction dispositions of property subject to criminal forfeiture is further complicated by the question of whether, simply by transferring an asset to a third party, a defendant may shield it from forfeiture. *In civil forfeitures, such transfers are voidable, for the property is considered "tainted" from the time of its prohibited use or acquisition.* But it is unclear whether, in the context of criminal forfeitures, the same principle is applicable so that improper pre-conviction transfers may be voided.

To resolve that uncertainty, the 1984 Congress included a relation-back provision in the criminal forfeiture statute, 21 U.S.C. 853(c), and it provided for forfeiture of all property in the hands of transferees, except for bona fide purchasers.⁹ As noted, the same Congress also codified the relation-back doctrine with respect to civil forfeitures, while recognizing that the doctrine was already "well established in current law." S. Rep. No. 225, *supra*, at 215. Whether by oversight or design, however, the civil relation-back

⁹ Section 853(c) provides:

All right, title, and interest in property described in subsection (a) of this section vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (n) of this section that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

provision, 21 U.S.C. 881(h), included no exemption for bona fide purchasers.

The exception for bona fide purchasers in Section 853(c) does not suggest that the 1984 Congress—let alone the prior Congress that enacted the innocent owner provision at issue here—intended to exempt *all* innocent transferees of drug-related property from civil forfeitures, whether or not bona fide purchasers. To the contrary, the 1984 committee report expressed the view that all transfers of "tainted" property by drug offenders were "voidable" in civil forfeiture proceedings and indicates that Section 853(c) was intended to produce the same result in the criminal context, with a limited exception for bona fide purchasers. The fact that the 1984 Congress failed to provide a similar express exception in the civil context does not justify exempting all innocent transferees from civil forfeitures.¹⁰

¹⁰ The upshot of the Third Circuit's reasoning is a very peculiar anomaly illustrated by the facts of this case. The federal indictment against Brenna charges him with drug-related offenses and alleges that the property in question here is subject to criminal forfeiture. If Brenna is convicted and that allegation is sustained, Goodwin will have no defense to such a forfeiture, because she is concededly not a bona fide purchaser. There is no reason to believe that the 1984 Congress intended to authorize criminal forfeitures of property that was exempt from civil forfeiture. (As we demonstrate below, the possibility that property that is exempt from criminal forfeiture by virtue of a transfer to a bona fide purchaser will be subjected to civil forfeiture is more hypothetical than real.)

The facts of this case also illustrate why it is so important that civil forfeitures be available even for property that is subject to criminal forfeiture. Brenna is a fugitive and, at present, cannot be tried. Likewise, if a criminal defendant dies, any prosecution against him abates, and civil proceedings

b. Moreover, the Third Circuit's concern for the effect of the government's position on bona fide purchasers is greatly overstated. The Attorney General has discretion to remit civil forfeitures of drug-related assets. 21 U.S.C. 881(d) (incorporating provisions of customs laws relating to "the remission or mitigation of * * * forfeitures"). Regulations providing for the exercise of that discretion make special provision for general creditors, lienholders, lessors, and other holders of bona fide interests in property that is subject to forfeiture. 28 C.F.R. 9.6. More generally, any person may petition for remission of a forfeiture on the strength of a showing that the petitioner "has a valid, good faith interest in the seized property as owner or otherwise" and that the owner was without knowledge of the property's involvement in a violation. See 28 C.F.R. 9.5. Finally, appropriations from the Assets Forfeiture Fund are available to compromise and pay valid liens and mortgages on forfeited property and to make payments to innocent persons in connection with the remission and mitigation of forfeitures. 28 U.S.C. 524(c)(1)(D) and (E); see S. Rep. No. 225, *supra*, at 217.

In keeping with the policy underlying those provisions, we are advised that federal law enforcement authorities do not, as a matter of practice, pursue forfeiture of property in the hands of bona fide purchasers for value. In any event, the Third Circuit's concern for bona fide purchasers cannot support an

are the only remaining means of enforcing a forfeiture of drug proceeds belonging to the deceased offender. In some cases, civil forfeitures also enable the government to take control of drug-related assets without awaiting the completion of criminal proceedings.

exception for all after-acquired interests in drug-related property.¹¹

5. Congress has made clear that forfeitures play an essential role in efforts to eradicate drug trafficking. The reasoning underlying the drug forfeiture legislation enacted in 1984 is no less compelling today (S. Rep. No. 225, *supra*, at 191):

Today, few in the Congress or the law enforcement community fail to recognize that the traditional criminal sanctions of fine and imprisonment are inadequate to deter or punish the enormously profitable trade in dangerous drugs which, with its inevitable attendant violence, is plaguing the country. Clearly, if law enforcement efforts to combat racketeering and drug trafficking are to be successful, they must include

¹¹ District court decisions have relied upon the legislative history of the 1978 and 1984 amendments to the civil forfeiture statute as a basis for recognition of a limited exception for bona fide purchasers. *United States v. One Single Family Residence Located at 6960 Miraflores Ave.*, 731 F. Supp. at 1568; *United States v. One Single Family Residence*, 683 F. Supp. at 787-788. See *Nissan*, 889 F.2d at 1322 (Murnaghan, J., concurring). To our knowledge, the Third Circuit's decision in this case is the first to apply the innocent owner defense to transferees other than bona fide purchasers whose claims have arisen after drug proceeds are subject to forfeiture.

It should also be noted that while forfeitures of property in the hands of bona fide purchasers are harsh, they are hardly unprecedented. See, e.g., *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. at 680-690; *J.W. Goldsmith, Jr. v. Grant Co. v. United States*, 254 U.S. 505, 510-511 (1921); *Thacher's Distilled Spirits*, 103 U.S. at 682; *Dobbins's Distillery v. United States*, 96 U.S. 395, 401 (1878); *Henderson's Distilled Spirits*, 81 U.S. (14 Wall.) at 56-57; *Harmony v. United States*, 43 U.S. (2 How.) 210, 233 (1844).

an attack on the economic aspects of these crimes. Forfeiture is the mechanism through which such an attack may be made.

The Third Circuit's decision, unless reversed, will undercut the effectiveness of that critical remedy.

In its most benign applications, the Third Circuit's interpretation will enable drug dealers to realize a benefit from their illegal activities. Money has value to a drug dealer, like anyone else, in part because it can be given away. Even if courts could reliably limit the innocent owner defense to donees who were in fact ignorant of the source of their gifts, the Third Circuit's interpretation would allow drug dealers to distribute their wealth to minor children, other unknowing family members, associates, and others with whom they seek to curry favor. Following Brenna's lead, they could even enjoy the use of very valuable property that they have given to their most intimate companions.

Furthermore, the Third Circuit's interpretation will encourage drug dealers to use nominees to conceal their assets. It is not difficult for even close friends or relatives of a drug trafficker to contend, as Goodwin does here, that they were unknowing recipients of gifts of drug proceeds—and it is difficult to assemble evidence rebutting such a claim. By placing title to drug proceeds in another person, therefore, a drug trafficker can erect a serious obstacle in the way of the government's efforts to obtain forfeiture of assets that are demonstrably traceable to drug transactions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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NOVEMBER 1991

APPENDIX A
UNITED STATES COURT OF APPEALS
THIRD CIRCUIT

No. 90-5823

UNITED STATES OF AMERICA

v.

A PARCEL OF LAND, BUILDINGS, APPURTENANCES AND
IMPROVEMENTS, KNOWN AS 92 BUENA VISTA AVE-
NUE, RUMSON, NEW JERSEY, and BETH ANN GOOD-
WIN, CLAIMANT

Argued April 2, 1991

Decided June 17, 1991

Rehearing Denied Aug. 13, 1991

Before MANSMANN and HUTCHINSON, Circuit
Judges, and O'NEILL, District Judge.*

OPINION OF THE COURT

MANSMANN, Circuit Judge.

In this appeal arising out of a civil forfeiture
action, at least nominally civil in nature, we are pre-

* Honorable Thomas N. O'Neill, Jr. of the United States
District Court for the Eastern District of Pennsylvania, sit-
ting by designation.

sented with the very interesting question of whether the donee of monies, which the government has established probable cause to believe are traceable to drug transactions and which were used by the donee to purchase the premises that the government seeks to forfeit, may assert an innocent owner defense pursuant to 21 U.S.C. § 881(a)(6).¹ The district court found that the donee, Beth Ann Goodwin, could not assert such a defense because she admitted that the money with which she bought the premises was a gift and therefore she was not a bona fide purchaser for value. We conclude that the district court erred as a matter of law because Goodwin was entitled to assert an innocent owner defense even though she was not a bona fide purchaser for value. Additionally, we shall address three other questions that have been certified by the district court pursuant to 28 U.S.C. § 1292(b).

I.

Joseph Anthony Brenna and Beth Ann Goodwin shared a close personal relationship, akin to marriage, from the late 1970's until 1987. In early November of 1982, Brenna had approximately \$216,000 transferred by wire to Goodwin's attorneys in New Jersey which Goodwin used to purchase the real property known as 92 Buena Vista Avenue, Rumson, New Jersey. Goodwin has held title to these premises and has resided there since 1982.

¹ Section 881(a)(6) sets forth an innocent owner defense to "civil" forfeiture proceedings instituted under § 881. Section 853(c) also sets forth an innocent owner defense to criminal forfeitures under § 853, but in different language. As explained below, that difference can be significant. See Part III, at [6a], *infra*.

On April 3, 1989, the government filed a verified complaint pursuant to 21 U.S.C. § 881 *et seq.* seeking the seizure and forfeiture of the premises. The forfeiture proceeding was brought by the government as a consequence of the indictment of Joseph Anthony Brenna. The indictment alleged that from on or about January 1982, Brenna and others engaged in a continuing criminal enterprise in violation of 21 U.S.C. § 848, engaged in a conspiracy to import more than 1,000 kilograms of marijuana into the United States in violation of 21 U.S.C. § 963, and knowingly imported in excess of 1,000 kilograms of marijuana into the United States in violation of 21 U.S.C. § 952(a), and 18 U.S.C. § 2. On April 12, 1989, upon the *ex parte* application of the United States, the United States District Court for the District of New Jersey reviewed the verified complaint and determined that there was probable cause to believe that the premises were subject to forfeiture. The court thus issued a Summons and Warrant For Arrest and soon thereafter a United States Marshal seized the premises. Goodwin remains in possession of the premises pursuant to an Occupancy/Tenant Agreement with the United States Marshals Service.

On June 15, 1989, Goodwin filed an Answer, Claim and Counterclaim. On May 29, 1990, a hearing was held before the district court at which Goodwin moved to dismiss the complaint and seizure or, in the alternative, to grant summary judgment in her favor with respect to the United States' claim for forfeiture. The United States opposed the motion and crossmoved for a stay of the forfeiture proceedings. The district court denied Goodwin's motions and granted the United States' motion for a stay pending the criminal trial of Brenna and his co-defendants in the Southern

District of Florida. The district court further ordered that if Brenna's trial were severed from the remaining defendants because of his fugitive status, Goodwin could move for relief from the stay after the trial of the remaining defendants. On July 13, 1990, the district court issued an order pursuant to 28 U.S.C. §1292(b) certifying for appeal four questions:

(1) Whether the seizure of the home of the claimant, Beth Ann Goodwin, was unconstitutional because there was no preseizure hearing and, if so, whether the forfeiture proceedings involving the home should be dismissed as a result;

(2) Whether an innocent owner defense may be asserted by a person who is not a bona fide purchaser for value concerning a parcel of land where the government has established probable cause to believe that the parcel of land was purchased with monies traceable to drug proceeds;

(3) Whether the verified complaint in this action was based, in part, upon immunized testimony and if so, whether the forfeiture proceedings must be dismissed as a result; and

(4) Whether the United States' claims in this action are barred by the applicable statute of limitations and/or undue delay.

Because these certified questions involve questions of law, we shall exercise plenary review.

II.

Goodwin asserts that the government's seizure of her home pursuant to 21 U.S.C. § 881 *et seq.* without pre-seizure notice and hearing is in violation of the United States Constitution. In support of this argument, Goodwin cites *United States v. Property at 4492*

S. Livonia Road, Livonia, New York, 889 F.2d 1258 (2d Cir. 1989). In *South Livonia*, the Court of Appeals for the Second Circuit specifically considered whether 21 U.S.C. § 881(a)(7) was unconstitutionally applied in the context of the seizure of the claimant's home without notice and a hearing. Despite the fact that the court concluded that the claimant's interest in his home and the lack of exigent circumstance surrounding the seizure made the seizure unlawful, the court nevertheless determined that the forfeiture was not improper. Based on decisions from other courts of appeals, the Court of Appeals for the Second Circuit held that "the illegal seizure of property, standing alone, [does] not immunize that property from forfeiture, so long as impermissibly obtained evidence is not used in the forfeiture proceeding." *South Livonia*, 889 F.2d at 1265.

In keeping with the analysis used in *South Livonia*, we agree that the government's seizure of Goodwin's home pursuant to section 881 without notice and a hearing may have been unlawful. Nonetheless, the unlawfulness of the seizure does not require dismissal of the forfeiture proceedings provided that probable cause to seize the premises can be supported by untainted evidence. *United States v. One 1978 Mercedes Benz, Four-Door Sedan*, 711 F.2d 1297, 1302-03 (5th Cir. 1983). Indeed, the indictment of Brenna, which establishes probable cause to believe that he was involved in a drug importation scheme, and other inferential evidence obtained independently of the illegal seizure suffice to establish that the district court had "reasonable grounds to believe that the property probably was derived from drug transactions." *United States v. Parcels of Land*, 903 F.2d 36, 39 (1st Cir. 1990). Accordingly, the district court correctly de-

clined to dismiss the forfeiture action, "because the government [did] establish[], by permissible evidence, that probable cause exist[ed] to subject the premises to forfeiture." *U.S. v. 92 Buena Vista Ave.*, 738 F.Supp. 854, 857 (D.N.J.1990).

III.

Goodwin also argues that the district court erred in holding that Goodwin could not invoke an "innocent owner" defense pursuant to section 881(a)(6) because she was not a bona fide purchaser for value. Section 881(a)(6) provides for an innocent owner defense in the following language:

... no property shall be forfeited . . . to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

21 U.S.C. § 881(a)(6). Goodwin admits that the money provided to her by Brenna to purchase the premises was a gift, but she asserts that she did not know that such money was the proceeds of drug transactions.

The district court articulated three specific bases in support of its conclusion that an innocent owner defense may only be invoked by a bona fide purchaser for value: (1) the criminal forfeiture statute, 21 U.S.C. § 853(c), explicitly protects only transferees who are bona fide purchasers for value; (2) those who do not have legal title to property may not validly transfer it to others except when the transferee is a bona fide purchaser for value; and (3) in the case of fraudulent conveyances, bona fide purchasers for value may be protected, but recipients of gifts are

not. The district court further noted that from a common sense standpoint it was unlikely that Congress intended that a drug dealer should be able to distribute, with impunity, the proceeds from his drug transactions, even to innocent parties.

Despite the appeal of this analysis, the plain language of the innocent owner provision speaks only in terms of an "owner" and in no way limits the term "owner" to a bona fide purchaser for value. Furthermore, in *United States v. Parcel of Real Property Known as 6109 Grubb Road*, 886 F.2d 618 (3d Cir. 1989), we determined, after reviewing the legislative history of section 881(a)(6), that "the term 'owner' should be broadly interpreted to include any person with a recognizable legal or equitable interest in the property seized." *Id.* at 625 n. 4 (quoting 1978 U.S. Code Cong. & Admin. News at 9522-23). Limiting the term "owner" to a bona fide purchaser for value and thereby excluding a recipient of a gift from being considered an "owner" would contravene the express legislative intent that we interpret "owner" broadly.

Moreover, as the district court pointed out, the criminal forfeiture statute, section 853, is explicitly limited to bona fide purchasers for value, while in section 881 Congress omitted such limiting language. We believe that such a difference was intended by Congress. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291, 108 S.Ct. 1811, 1817, 100 L.Ed.2d 313 (1988) ("if the statute is clear and unambiguous, that is the end of the matter, for the court . . . must give effect to the unambiguously expressed intent of Congress"). In section 881, Congress chose to utilize the broad term "owner." Therefore, rather than reading into section 881 a requirement that an owner be a bona fide purchaser for value, we conclude that

Congress intended to omit the bona fide purchaser for value requirement in that section. Consequently, we hold that Goodwin need not be a bona fide purchaser for value to raise an innocent owner defense pursuant to section 881(a)(6).

The government forcefully argues that Goodwin never acquired an ownership interest in the premises because of the relation back doctrine embodied in 21 U.S.C. § 881(h), which provides that “[a]ll right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.” Thus, the government asserts that Goodwin could never have been an “owner” because at the time of the drug transactions, all right, title, and interest in the proceeds from the drug transactions vested in the United States. *See In the Case of One 1985 Nissan, 300 ZX*, 889 F.2d 1317 (4th Cir.1989).

We disagree with this analysis. Again we must read the plain language of the statute as Congress must have intended it by the words and structure it carefully chose. Section 881(h) vests title in the United States *in that property described in subsection (a)*. Subsection (a) sets forth that property which is subject to forfeiture and it also provides for “innocent owner” defenses.² Consequently, the property referred to in subsection (a) does *not* include property that has been exempted from forfeiture by means of an innocent owner defense. Logically then one must first ascertain whether the prop-

erty at issue is not forfeitable because of an innocent owner defense before applying section 881(h). If the property is exempted from forfeiture pursuant to an innocent owner defense and therefore is not forfeitable property under subsection (a), then section 881(h) does not apply to such property that is not subject to forfeiture. Accordingly, the relation back doctrine would only be relevant in this case if a determination were made that Goodwin did not make out a valid innocent owner defense.

Moreover, to interpret section 881(h) in the manner suggested by the government would essentially serve to emasculate the innocent owner defense provided for in section 881(a)(6). No one obtaining property after the occurrence of the drug transaction—including a bona fide purchase for value—would be eligible to offer an innocent owner defense on his behalf. Judge Murnaghan, in his concurrence in *1985 Nissan*, gives an example which illustrates the overreaching effects that might result if the government’s argument were accepted by us:

If a drug dealer should buy a car from a perfectly reputable auto dealership with proceeds from drug sales, apparently, under the majority’s opinion, the government could use civil forfeiture to take away the money paid to the car dealer, even though the dealer was entirely unaware that he had sold the automobile to a drug dealer.

1958 Nissan, 889 F.2d at 1322. Accordingly, we will remand this matter to the district court to determine whether Goodwin was an innocent owner.

² Both sections 881(a)(6) and 881(a)(7) provide for the use of “innocent owner” defenses.

IV.

In May, 1989, the United States immunized Goodwin and took her testimony concerning the criminal investigation of Brenna. In his deposition testimony, Special Agent Richard Giacobbe of the Drug Enforcement Administration, who verified the forfeiture complaint, admitted that Goodwin's immunized testimony was relied upon, in part, in preparing the complaint. Goodwin argues that the use of such testimony deprived her of her fifth amendment rights and therefore the complaint should be dismissed with prejudice.

The extent of immunity granted to Goodwin was set forth in a May 4, 1988, letter signed by Assistant United States Attorney Lynne W. Lamprecht. In the letter, the government agreed that pursuant to 18 U.S.C. § 6002 "no testimony or other information resulting from Ms. Goodwin's interview on May 5, 1988 (or any information directly or indirectly derived from such testimony or other information) may be used against Ms. Goodwin *in any criminal case* except a prosecution for perjury, or for giving a false statement." (Emphasis added.)³ The district court

³ For the purposes of our analysis, we shall assume, without deciding, that a civil forfeiture effected under section 881 constitutes a "criminal case" under the immunity statute, 18 U.S.C. § 6002. Obviously, if we were to decide that a section 881 forfeiture is not a criminal case, no more analysis would be required and upon that basis we would be able to affirm the district court's conclusion that the use of Goodwin's immunized testimony does not require that the forfeiture complaint be dismissed.

We note that there is caselaw supporting the argument that such a forfeiture does constitute a criminal case. In *Boyd v.*

concluded from this language that Goodwin was granted use immunity for her testimony and not transactional immunity. Therefore, despite the fact that the complaint was based, in part, on immunized testimony, the district court ruled that because the government established probable cause from other independent sources, it would not dismiss the complaint.

The immunity granted pursuant to 18 U.S.C. § 6002 is, indeed, "use" immunity. *Tierney v. United*

United States, 116 U.S. 616, 634, 6 S.Ct. 524, 534, 29 L.Ed. 746 (1886), the Supreme Court stated:

We are also clearly of opinion that proceedings instituted for the purpose of declaring the forfeiture of a man's property by reason of offenses committed by him, though they may be civil in form, are in their nature criminal. . . . The information, though technically a civil proceeding, is in substance and effect a criminal one. . . . As therefore, suits for penalties and forfeitures, incurred by the commission of offenses against the law, are of this quasi criminal nature, we think they are within the reason of criminal proceedings for all the purposes of the Fourth Amendment of the constitution and of that portion of the Fifth Amendment which declares that no person shall be compelled in any criminal case to be a witness against himself.

Id.; see also *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693, 700, 85 S.Ct. 1246, 1250, 14 L.Ed.2d 170 (1965) (citing *Boyd* for the proposition that a forfeiture proceeding is quasi-criminal in character with the same objectives of a criminal proceeding: to penalize one for committing a crime); and *United States v. Riverbend Farms, Inc.*, 847 F.2d 553 (9th Cir.1988) (quoting *United States v. Seifuddin*, 820 F.2d 1074, 1077 (9th Cir.1987) for the proposition that forfeiture statutes are criminal "only for the purposes of the fourth amendment search and seizure clause and the fifth amendment self-incrimination clause").

States, 409 U.S. 1232, 93 S.Ct. 17, 34 L.Ed.2d 37 (1972). In *United States v. Pellon*, 475 F.Supp. 467, 479 (S.D.N.Y.1979), the court distinguished "use" immunity from "transactional" immunity:

The difference between transactional immunity and use immunity is that in the former, the witness is protected completely from prosecution for any offense about which he testifies. Use immunity is not as broad; it precludes only the Government's use of the testimony, and the witness may still be prosecuted if the prosecution can prove its case independently of the witness' own testimony.

Id. (citing *Kastigar v. United States*, 406 U.S. 441, 449-53, 92 S.Ct. 1653, 1658-61, 32 L.Ed.2d 212 (1972)).

The district court concluded that the United States "adequately demonstrated, from other sources independent of Ms. Goodwin's testimony, that probable cause exists to support forfeiture of the premises." 92 *Buena Vista*, 738 F.Supp. at 861. In support of its determination that there was an independent basis for a finding of probable cause, the district court set forth the following facts, among others, that were derived independently of Goodwin's testimony:

On or about April 13, 1990, a Grand Jury sitting in the Southern District of Florida returned an indictment against Joseph A. Brenna, among others, for violations of 21 U.S.C. §§ 848 and 853 and for forfeiture of the property in question. . . . The probable cause to indict Mr. Brenna for the drug offenses was derived independent of any information from the claimant, since the

claimant disclaims any knowledge of Mr. Brenna's involvement in drug transactions. . . . In addition, Mr. Giacobbe obtained information from a Mr. Joseph Mazacco, an individual cooperating with the government on a plea agreement, that Brenna used drug money to purchase the premises

* * * * *

In addition, Ms. Goodwin states in her verified petition that she lived with Joseph Brenna from approximately 1981 through 1987; that she maintained an intimate personal relationship with him during that time; and that he supported her and her children She further states that Mr. Brenna made a gift to her of the proceeds used to purchase the premises

* * * * *

The government has also received testimony from Mr. Shaun Murphy, an accountant working out of the British Virgin Islands, who made investments on behalf of clients so that their real names would not be revealed

* * * * *

As for his [Mr. Murphy's] business with Mr. Brenna, between August and October, 1982, Mr. Brenna brought two cash deposits to Mr. Murphy in the amount of \$250,000.00 and \$220,000.00, the latter deposit being given to him in a bag Mr. Brenna instructed Mr. Murphy to wire \$216,000.00 of this cash to Mason, Griffin and Pierson, a law firm in New Jersey, . . . for purchase of the premises Mr. Murphy also wired about \$89,000 up to New Jersey. . . . Mr. Brenna did not explain from where he got his

cash and, as was his general business practice, Mr. Murphy made no inquiries

92 Buena Vista, 738 F.Supp. at 857-58 (emphasis added).

In determining whether proceeds are traceable to drug transactions, "[t]here is no need to tie the [property] to proceeds of a particular identifiable illicit drug transaction." *United States v. 1982 Yukon Delta Houseboat*, 774 F.2d 1432, 1435 n.4 (9th Cir.1985) (emphasis in original). In determining whether probable cause exists for forfeiture, "all that is required is that a court be able to look at the 'aggregate' of the facts and find reasonable grounds to believe that the property probably was derived from drug transactions." *United States v. Parcels of Land*, 903 F.2d 36 (1st Cir.1990). Based upon the information cited by the district court which was garnered independently of Goodwin's testimony, the district court correctly concluded that probable cause existed for the forfeiture of the property pursuant to 21 U.S.C. § 881(a)(6).

V.

Finally, we must address the issue of whether the United States' claims are barred by the applicable statute of limitations or undue delay. It appears clear that the customs laws are intended to provide the relevant statute of limitations with respect to forfeiture proceedings brought pursuant to section 881. Section 881(d) provides:

The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property or the pro-

ceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under any of the provisions of this subchapter, insofar as applicable and not inconsistent with the provisions hereof;

21 U.S.C. § 881(d). Furthermore, the legislative history provides that "Subsection (d) of this section provides that forfeiture proceedings shall be in accord with the provisions of existing U.S. customs law." House Report No. 91-1444, Comprehensive Drug Abuse Prevention and Control Act of 1970, reprinted in 1970 *U.S.Code Cong. and Adm.News*, pp. 4566, 4624.

The applicable statute of limitations, 19 U.S.C. § 1621 of the customs laws, requires that the United States commence its forfeiture action against Goodwin "within five years after the time when the alleged offense was discovered." 19 U.S.C. § 1621. Accordingly, because the government became aware of the transactions giving rise to this action in 1986 and because the government instituted this forfeiture action within five years (1989), the statute of limitations does not bar this action.

Goodwin also claims that the forfeiture action is barred by undue delay. The only caselaw which we have been able to uncover involves undue delay between the time of the seizure of the property and the post-seizure filing of the forfeiture action. Consequently, because this forfeiture proceeding was brought prior to the seizure, such caselaw is inapposite. Here, Goodwin has been permitted to be heard "at a meaningful time after the deprivation of the property" 92 Buena Vista, 738 F.Supp. at

862. Moreover, Goodwin has not been wholly deprived of her property since she has been permitted to continue to reside at the premises in accordance with the terms of the occupancy agreement. Therefore, the district court correctly held that there was no undue delay that would warrant dismissal of this forfeiture proceeding.

VI.

Accordingly we will remand this case to the district court to reconsider Goodwin's motion for summary judgment and her motion to dismiss after determining whether Goodwin was an "innocent owner." We will, however, affirm the district court with respect to the other certified issues.

APPENDIX B

UNITED STATES DISTRICT COURT D. NEW JERSEY

Civ. A. No. 89-1411

UNITED STATES OF AMERICA, PLAINTIFF

v.

A PARCEL OF LAND, BUILDINGS, APPURTENANCES, AND
IMPROVEMENTS, KNOWN AS 92 BUENA VISTA AVE.,
RUMSON, NEW JERSEY, DEFENDANT

June 1, 1990

OPINION

HAROLD A. ACKERMAN, District Judge.

The United States of America brings this action for the civil forfeiture of real property pursuant to 21 U.S.C. §881. The property in question is a Parcel of Land, Buildings, Appurtenances and Improvements, known as 92 Buena Vista Avenue, Rumson, New Jersey (hereinafter the "premises"). The action was commenced by the filing of a Verified Complaint in April, 1989, which was immediately followed by a seizure of the premises. On June 15, 1989, Ms. Beth Ann Goodwin filed an Answer and Claim against the property.

Presently before the Court is a motion by the claimant, Ms. Goodwin, to dismiss the complaint, for summary judgment, and to compel discovery. Her motion for dismissal of the complaint is based upon the grounds that (1) the seizure of her home was unconstitutional, because there was no probable cause and no preseizure hearing; (2) the property is not subject to forfeiture, because Ms. Goodwin is an "innocent owner"; (3) the Verified Complaint was based, at least in part, on immunized testimony; (4) the government unduly delayed in the seizure and/or is barred by the statute of limitations; and (5) the government's refusal to engage in discovery justifies dismissal of this action. The government has opposed the claimant's motion on all grounds and has cross-moved for a stay on discovery and/or a stay of this action. I shall first address the arguments raised by the claimant, because a finding that this action should be dismissed would obviate the need to consider the government's motion for a stay. On the other hand, a finding that the government is entitled to a stay may only postpone (and not obviate) the need to consider the claimant's arguments in support of her motion, and I think the fairest approach is to consider claimant's arguments first.

I. *Constitutionality of the Seizure*

The premises in question were seized after the complaint, verified by Special Agent Richard Giacobbe of the Drug Enforcement Administration, ("DEA"), was reviewed by this Court and a finding was made that probable cause existed for the seizure. The claimant asserts that the "seizure should be dissolved," because it was effected in violation of the United States Constitution since there was no probable cause for the

seizure and no preseizure hearing. The parties have pointed out that there is no binding precedent to guide this Court on the issue of whether preseizure notice and a hearing are constitutionally required before a home is seized under 21 U.S.C. § 881, and further, that the Second and Eleventh Circuits have split on the issue. See *United States v. Property at 4492 S. Livonia Road, Livonia, New York*, 889 F.2d 1258, 1265 (2d Cir.1989), *reh'g denied*, 897 F.2d 659 (2d Cir.1990) (preseizure notice and hearing required), and *United States v. A Single Family Residence and Real Property Located at 900 Rio Vista Blvd., Ft. Lauderdale, Fl.*, 803 F.2d 625, 632 (11th Cir.1986) (no preseizure notice or hearing required).

However, there is no need for me to address this constitutional issue. "Various circuit courts have held that the illegal seizure of property, standing alone, will not immunize that property from forfeiture, so long as impermissibly obtained evidence is not used in the forfeiture proceeding." *Real Property Located at 4492 S. Livonia Rd., supra*, at 1265 (citations omitted); see also *Application of Kingsley*, 802 F.2d 571, 578-579 & n. 9 (1st Cir.1986). Where an unconstitutional seizure occurs, the victim can bring a damages action against the offending officer "should he be able to show that the warrantless seizure was effected in bad faith and caused personal damage", *United States v. One 1978 Mercedes Benz, Four-Door Sedan*, 711 F.2d 1297, 1303 n. 7 (5th Cir.1983), but it provides no basis for dismissing an action where the government demonstrates entitlement to forfeiture based upon permissible evidence. See *id.* at 1303; see also *United States v. One 1975 Pontiac Lemans, Etc.*, 621 F.2d 444, 450-51 (1st Cir.1980) (same). I find that the instant complaint should not

be dismissed, because the government has established, by permissible evidence, that probable cause exists to subject the premises to forfeiture.

Pursuant to the forfeiture statute at hand, all proceeds traceable to drug transactions are subject to forfeiture. 21 U.S.C. § 881(a)(6). In determining whether proceeds are so traceable, "[t]here is no need to tie the [property] to proceeds of a particular identifiable illicit drug transaction." *United States v. 1982 Yukon Delta Houseboat*, 774 F.2d 1432, 1435 & n. 4 (9th Cir.1985) (emphasis in original). In addition, the government is only required to demonstrate that probable cause exists for property to be subject to forfeiture under 21 U.S.C. § 881. *United States v. Property Known as 6109 Grubb Road*, 886 F.2d 618, 521 (3d Cir.1989), *reh'g denied*, 890 F.2d 659, (3d Cir.1989). The burden then shifts to the claimant to show, by a preponderance of the evidence, that the property is not forfeitable. See 19 U.S.C. § 1615. See also *United States v. \$55,518.05 in U.S. Currency*, 728 F.2d 192, 195-6 (3d Cir.1983); *United States v. One 56-Foot Yacht Named Tahuna*, 702 F.2d 1276, 1281 (9th Cir.1983).

In assessing whether the government has sustained its burden of showing probable cause, inadmissible hearsay may be considered. *United States v. Miscellaneous Jewelry*, 667 F.Supp. 232, 238 (D.Md.1987), *aff'd*, 889 F.2d 1317 (4th Cir.1989); *United States v. Yacht Named Tahuna*, *supra*, at 1283. In addition, probable cause merely requires that the available facts would "warrant a man of reasonable caution in the belief" that the property is subject to forfeiture; "it does not demand any showing that such a belief be correct or more likely true or false." *Texas v. Brown*,

460 U.S. 730, 742, 103 S.Ct. 1535, 1543, 75 L.Ed.2d 502 (1983) (Rehnquist, J., plurality) (citations omitted); see also *United States v. Rickus*, 737 F.2d 360, 367 (3d Cir.1984) ("[p]robable cause deals with probabilities, not certainties"). In making a probable cause determination, the totality of the circumstances are considered. See *Rickus*, *supra*, at 367. "[A]ll that is required is that a court be able to look at the 'aggregate' of the facts and find reasonable grounds to believe that the property probably was derived from drug transactions." *United States v. Parcels of Land*, 903 F.2d 36 (1st Cir.1990).

I find that the government has demonstrated that probable cause exists to believe that the premises are traceable to drug transactions. On or about April 13, 1990, a Grand Jury sitting in the Southern District of Florida returned an indictment against Joseph A. Brenna, among others, for violations of 21 U.S.C. §§ 848 and 853 and for forfeiture of the property in question. See Affidavit of Neil R. Gallagher, Esq., filed May 4, 1990, ("Gallagher Aff. II"), and Exhibit A. The probable cause to indict Mr. Brenna for the drug offenses was derived independent of any information from the claimant, since the claimant disclaims any knowledge of Mr. Brenna's involvement in drug transactions. See *infra*, Section II. In addition, apart from the indictment, probable cause is established. In the Verified Complaint, DEA Agent Giacobbe attests that, to his knowledge, the following facts, among others, are true: (1) that the premises in question were purchased by Ms. Goodwin with funds provided by Joseph A. Brenna; (2) that Mr. Brenna had been involved in a scheme to import marijuana into the United States from Columbia during the years 1982 through 1986; (3) that Mr. Brenna

obtained \$216,000.00 for the purchase of the premises from criminal acts involving importation, possession and distribution of controlled dangerous substances; (4) that on September 29, 1988, Mr. Brenna pled guilty to violating 31 U.S.C. § 5322 and 18 U.S.C. § 2 for failure to file a currency report for the transfer of \$225,000, part of which was used to purchase the premises; and (5) that in December, 1986, Mr. Brenna paid \$30,000.00 to a crew member smuggling marijuana in the premises. *See Verified Complaint*, ¶¶ 5-19. In addition, Mr. Giacobbe obtained information from a Mr. Joseph Mazacco, an individual co-operating with the government on a plea agreement, that Brenna used drug money to purchase the premises. *See deposition of Mr. Giacobbe*, taken June 27, 1989, at 75, 78-79, 143, (annexed as Exhibit A to Affidavit of James A. Plaisted, filed Sept. 1, 1989), [Plaisted Aff.]).

In addition, Ms. Goodwin states in her verified petition that she lived with Joseph Brenna from approximately 1981 through 1987; that she maintained an intimate personal relationship with him during that time; and that he supported her and her children. *See Verified Petition of Beth A. Goodwin*, May 19, 1989, ("Goodwin Pet."), ¶ 1, annexed to Plaisted Aff. as Exhibit C. She further states that Mr. Brenna made a gift to her of the proceeds used to purchase the premises. *Id.*, ¶¶ 3, 8. As attested to by Agent Giacobbe in his deposition, an Internal Revenue Service Investigation revealed that Ms. Goodwin had no visible means of support from 1980 through at least 1985. *See Giacobbe dep.* at 85; *see also Verified Complaint*, ¶ 9. Neither she nor Mr. Brenna filed income tax returns for the years 1978 through 1985. *See Certificates of Non-Record*, annexed as Exhibits A

and B to Neil R. Gallagher Aff., filed Oct. 5, 1989, ("Gallagher Aff. I"). Ms. Goodwin explains her failure to file tax returns by stating that she has not been shown to have had any income other than that obtained from Mr. Brenna. *See Claimant's Reply Brief* at 9.

The government has also received testimony from Mr. Shaun Murphy, an accountant working out of the British Virgin Islands, who made investments on behalf of clients so that their real names would not be revealed. *See deposition of Shaun Murphy*, August 2, 1989, ("Murphy dep."), annexed to Gallagher Aff. I as Exhibit E, at 7, 11. In making investments for his clients, Mr. Murphy used code names. He thought Mr. Brenna's real name was either Joseph Crawford or Joseph Cavanaugh with his pseudonym being Joseph Smith. *Id.* at 7, 10, 11. Mr. Murphy had a large number of clients; he had approximately five hundred companies and managed funds or investments for about two hundred of those companies. *Id.* at 4-5. It was his business practice *not* to inquire of his clients as to the source of their funds, although many of his clients had given him funds in excess of one million dollars. *Id.* at 6, 16. It appears that he had a practice of picking up money in St. Thomas and taking it to Tortola in the British Virgin Islands. *Id.* at 11. He also had a practice of shredding all "wastepaper" from his transactions on a daily basis. *Id.* at 27.

As for his business with Mr. Brenna, between August and October, 1982, Mr. Brenna brought two cash deposits to Mr. Murphy in the amount of \$250,000.00 and \$220,000.00, the latter deposit being given to him in a bag. *See Murphy dep.* at p. 95, 98-9. Mr. Brenna instructed Mr. Murphy to wire \$216,000.00 of this cash to Mason, Griffin and Pier-

son, a law firm in New Jersey, (Murphy dep., at 100), for purchase of the premises. See Claimant's Reply Brief at 1, 8. Mr. Murphy also wired about \$89,000 up to New Jersey. *Id.* at 102. Mr. Brenna did not explain from where he got his cash and, as was his general business practice, Mr. Murphy made no inquiries. Murphy dep. at 6-7. "[A] large amount of cash 'is strong evidence that the money was furnished or intended to be furnished in exchange for drugs.'" *United States v. U.S. Currency \$88,310.78*, 851 F.2d 1231, 1236 (9th Cir.1988); see also, for example, *United States v. \$55,518.05 in United States Currency*, *supra*, at 196 ("Golden's silence speaks ever so loudly. For most Americans, \$55,518 is not casual pocket change which one leaves on the bureau at night").

In sum, (in addition to the indictment which itself establishes probable cause), DEA Agent Giacobbe received information that Mr. Brenna was involved in drug trafficking between 1982 and 1988; the premises were purchased by Ms. Goodwin with proceeds received from Mr. Brenna "as a gift"; the premises were purchased with cash wired from Mr. Murphy in the British Virgin Islands, whose business has been described above, to law offices in New Jersey; Mr. Brenna had deposited about \$470,000.00 in cash with Mr. Murphy under an alias name and without explaining the source of same; Ms. Goodwin lived with Mr. Brenna during the years 1982 through 1988 during which time he supported her and her children; and neither Ms. Goodwin nor Mr. Brenna filed tax returns during the years 1979 through 1985. I find that these facts provide sufficient basis for probable cause to believe that the premises were purchased with proceeds traceable to drug transactions.

Compare United States v. 1982 Yukon Delta Houseboat, *supra*, 774 F.2d at 1435 ("[t]he above cited evidence certainly gives rise to a reasonable belief that Ray-May Corp. lacked a source of funds to purchase the houseboats itself, and that Parker used the income he derived from illegal narcotics transactions to purchase the houseboats, but arranged for Ray-May to front for him and to be the nominal owner"). Accordingly, since the government has demonstrated that it is entitled to forfeiture, it is immaterial whether or not the initial seizure was constitutional and I will not pass on that issue.

II. Innocent Owner Defense

The claimant contends that the complaint should be dismissed, because she has adequately satisfied her burden of showing that the property is not forfeitable. She claims that she has an "innocent owner" defense to the forfeiture. She asserts that she had no knowledge that the funds used to purchase the premises were traceable to drug sales; that the premises were used to facilitate drug sales; or that Mr. Brenna had a record of violating any laws. Goodwin Pet., ¶ 11.

In support of her innocent owner defense, it appears that the claimant relies upon 21 U.S.C. § 881 (a) (6), which provides, in pertinent part, that property subject to forfeiture includes:

.... (6) All moneys . . . or other things of value furnished or intended to be furnished by any person in exchange for a controlled dangerous substance in violation of this subchapter, *all proceeds traceable to such an exchange*,¹ and all

¹ This reference to "all proceeds" clearly includes all types of property, including real and personal property. See *United States v. Premises Known as 8584 Old Brownsville Road*, 736

moneys, . . . intended to be used to facilitate any violation of this subchapter, *except that no property shall be forfeited . . . to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.*

21 U.S.C. § 881(a)(6) (emphasis supplied).²

The government contends that the claimant is not entitled to invoke the innocent owner defense, because all right, title and interest in the proceeds of the narcotics transactions passed to the United States at the time of the sale, (*see* 21 U.S.C. § 881(h)), and thus, the claimant never acquired an interest in the property. *See* Government's Supplemental Brief at 16. It appears that some courts have rejected such an application of the relation back doctrine in deciding whether or not a claimant has an interest in property to have *standing* to object to the forfeiture. *See United States v. Miscellaneous Jewelry, supra*, at 249 and cases cited therein.³ However, I believe there is

F.2d 1129, 1130 (6th Cir.1984); *United States v. Parcels of Land, supra*, at 47 (1st Cir., 1990).

² A similar "innocent ownership" defense is set forth at subsection (a)(7) to this provision, which provides that real estate used to facilitate the commission of drug offenses is subject to forfeiture, "except that no property shall be forfeited under this paragraph, to the extent an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner." 21 U.S.C. § 881(a)(7).

³ However, in *Miscellaneous Jewelry*, the court held that alleged heirs of property lacked standing to contest the forfeiture of the property which was traceable to and/or used to facilitate drug transactions. *See* 667 F.Supp. at 249.

a difference between the issue of whether a person has standing to object to a forfeiture and whether that forfeiture is permissible.⁴

I find that the claimant cannot successfully invoke the "innocent owner" defense here, because she admits that she received the proceeds to purchase the premises as a *gift* from Mr. Brenna. More particularly, I find that where, as here, the government has demonstrated probable cause to believe that property is traceable to proceeds from drug transactions, the innocent owner defense may only be invoked by those who can demonstrate that they are bona fide *purchasers for value*. *Accord United States v. One Single Family Residence, Miami*, 683 F.Supp. 783, 788 (S.D.Fla.1988) ("the innocent owner exception to forfeiture under section 881 also protects bona fide *purchasers for value*") (emphasis added).

In *One Single Family residence*, the court arrived at a similar conclusion after reviewing the legislative history behind the criminal and civil forfeiture provisions at 21 U.S.C. §§ 853(c) and 881. *See* 683 F.Supp. at 787. Also, the court took note that the typical case in which the innocent owner defense has been applied is where a person legitimately obtains ownership to property with untainted funds, and then the trafficker uses that property to facilitate his drug

⁴ The claimant has standing here, because, in addition to having legal title to the premises, she claims that she resided there for a number of years and treated the premises as her home. *Cf. United States v. One Parcel of Real Estate at 5860 N. Bay Road*, 121 F.R.D. 439, 440 (S.D.Fla.1988) ("possession of bare legal title by one who does not exercise dominion and control over the property is insufficient even to establish standing to challenge a forfeiture"). But, for reasons discussed *infra*, she does not have a legitimate innocent owner defense.

deals without the knowledge and consent of the owner. See 683 F.Supp. at 786. See also *United States v. One 107.9 A. Parcel of Land in Warren Tp.*, 898 F.2d 396, 397 (3d Cir.1990). In such a case, an innocent owner defense is necessary, because otherwise a legitimate property interest of a third party would be forfeited to the government for reasons entirely beyond the owner's control. See *Property Known as 6109 Grubb Road, supra*, 886 F.2d at 624-25. However, the same equities do not apply where, as here, there is probable cause to believe that the property was purchased with proceeds from drug transactions and given to the third party as a *gift*, because no investment has been made by the claimant.

This finding is consistent with the language of the civil forfeiture statute. In particular, the "innocent owner defense" at issue provides that "no property shall be forfeited . . . to the extent of the interest of *an owner*, by reason of any act or omission . . . committed or omitted without the knowledge or consent of *that owner*." 21 U.S.C. § 881(a)(6) (emphasis supplied). This language implies that the acts or omissions giving rise to forfeiture must be committed *after* the third party acquires a legitimate ownership interest in the property. In addition, if the drug trafficker purchases property with drug proceeds and *thereafter* conveys it as a gift, there is no reason for the drug trafficker to have obtained the consent of the transferee, and there is no incentive for the transferee to inquire as to the legitimacy of the transaction since no investment is being made.

The rule I have enunciated above—that the innocent owner defense cannot be invoked by the recipient of a gift of drug proceeds—is also buttressed by the analogous criminal forfeiture statute, traditional

legal precepts, and common sense. The "innocent owner" exception under the criminal forfeiture statute (which was codified after the exception had been in place under the civil forfeiture statute) protects only transferees who are bona fide purchasers for value. See 21 U.S.C. § 853(c). In addition, it is a traditional rule of law that those who do not have legal title to property cannot validly transfer it to others, and certain exceptions to this rule apply only where the transferee is a bona fide purchaser *for value*. See, e.g., N.J.S.A. § 12A:2-403. Similarly, where fraudulent conveyances are made, bona fide purchasers for value may be protected, but recipients of gifts are not. See, e.g., N.J.S.A. § 25:2-6. I simply do not believe that Congress intended for the innocent owner exception to permit a drug dealer to avoid the impact of the forfeiture statute by disbursing the proceeds from his drug transactions to "innocent" friends, family or other random recipients of the trafficker's benevolence.

Accordingly, I deny the claimant's motion for summary judgment to the extent it is based upon an "innocent owner" defense.⁵

III. *The Immunity Agreement*

The claimant argues that this action should be dismissed, because the Verified Complaint was based, at least in part, on immunized testimony. I disagree. The claimant was granted use immunity for her

⁵ Although I have found probable cause for forfeiture, I will not grant summary judgment in favor of the government, because the government has not so moved, and the claimant can still defeat the forfeiture by demonstrating, by a preponderance of the evidence, that the premises were not purchased with proceeds from drug trafficking.

testimony and not transactional immunity. See May 4, 1988 letter to Joel Kaplan, Esq., from Lynne W. Lamprecht, AUSA, annexed as page 2 to Exhibit A of Supplemental Pleaded Affidavit, filed Oct. 13, 1989; see also 18 U.S.C. § 6002. The government has adequately demonstrated, from other sources independent of Ms. Goodwin's testimony, that probable cause exists to support forfeiture of the premises. See *supra*, at Section I. Thus, I will not dismiss the Verified Complaint on the grounds that it is partly based upon immunized testimony.⁶

IV. Alleged Undue Delay

The claimant next argues that the government's complaint is barred, because it unduly delayed in the seizure in violation of her due process rights. The claimant argues that the government unduly delayed

⁶ The government has made the additional argument that it could use the testimony at issue, because this is not a criminal proceeding but a civil proceeding against the property. See *United States v. \$39,000 in Canadian Currency*, 801 F.2d 1210, 1218 (10th Cir.1986). Various courts have permitted the use of immunized testimony in civil cases, even where the civil suit was somewhat penal in nature. See, e.g., *Childs v. Schlitz*, 556 F.2d 1178 1179 (4th Cir.1977) (license revocation proceedings); *United States v. Kates*, 419 F.Supp. 846, 857-58 (E.D.Pa.1976) (civil fraud action). However, in *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693, 85 S.Ct. 1246, 14 L.Ed.2d 170 (1965), the Court held that evidence seized in violation of the Fourth and Fourteenth Amendments could not be used in civil forfeiture proceedings, because such proceedings are quasi-criminal in nature. See 380 U.S. at 700, 85 S.Ct. at 1250. Although it appears that, in light of the *Plymouth Sedan* case, Ms. Goodwin's immunized testimony could not be used in this civil forfeiture proceeding, I need not dismiss the Verified Complaint, because, as discussed above, there is an independent basis to provide probable cause to forfeit the premises apart from Ms. Goodwin's testimony.

between the time at which the alleged criminal events occurred and the seizure of the property. The government responds that there can be no due process concerns, because forfeiture proceedings were instituted before the seizure and the seizure was instituted immediately thereafter.

To the extent that the claimant is arguing that the warrant authorizing the seizure was based upon "stale" information, her arguments lack merit. As explained by the court in *United States v. One 1978 Mercedes Benz*, *supra*, at 1301-02, "the passage of time between the occurrence of the facts giving rise to probable cause and the occurrence of the seizure is irrelevant" on the issue of statutory probable cause. *Mercedes Benz*, 711 F.2d at 1302.

Due process concerns are implicated where there is a delay between the seizure of the property and the postseizure filing of a judicial forfeiture action. See *United States v. Eight Thousand Eight Hundred and Fifty Dollars in U.S. Currency*, 461 U.S. 555, 563, 103 S.Ct. 2005, 2011, 76 L.Ed.2d 143 (1983) (standards used to determine whether right to speedy trial is violated are applicable in determining whether due process concerns arise as to delay between seizure of the property and institution of forfeiture action) (18-month delay held permissible). Each of the cases relied upon by the claimant in support of her due process claim involved delays between the seizure of property and institution of forfeiture proceedings. See Claimant's Brief at 22, citing *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 94 S.Ct. 2080, 40 L.Ed.2d 452 (1974); *United States v. U.S. Treasury Bills Totalling \$160,916.25*, 750 F.2d 900 (11th Cir.1985), and *United States v. One Motor Yacht Named Mercury*, 527 F.2d 1112 (1st Cir. 1975). Due process concerns arise in such a situation,

because a property owner is entitled to be heard at a meaningful time after the deprivation of property that is caused by a seizure. *See United States v. 8,850, supra*, 461 U.S. at 562, 103 S.Ct. at 2010. Notably, there has been no real deprivation in this case, because Ms. Goodwin has been permitted to continue to reside at the premises under an arrangement with the government. *See Occupancy Agreement, Gallagher Aff. II, Exhibit D.*

Moreover, there is no dispute that this forfeiture proceeding was instituted before the seizure. The claimant was afforded the opportunity to contest the forfeiture and engage in discovery shortly after the seizure. Thus, under the cases cited by the claimant, no due process concerns are implicated. To the extent there was any delay between the events giving rise to the forfeiture and the institution of these proceedings, the statute of limitations governs.

V. Statute of Limitations

Claimant argues that this action is barred by the applicable statute of limitations. However, I find no cogent reason to distinguish this case from *United States v. \$116,000 in U.S. Currency*, 721 F.Supp. 701 (D.N.J.1989). In that case, Judge Wolin applied the statute of limitations set forth under the customs laws to actions brought under 19 U.S.C. § 1621. The customs laws require that the suit or action be "commenced within five years after the time when the alleged offense was discovered." *Id.*, at 703, citing 19 U.S.C. § 1621 (emphasis added). Although Judge Wolin was concerned with the statute of limitations under Section 1955(d) of Title 18, and here I am concerned with Section 881(a) of Title 21, both of these sections contain similar language incor-

porating the customs laws in general. The claimant argues that the government became aware of the events giving rise to this action in 1986 and thus, her motion to dismiss the complaint on statute of limitations grounds is denied.

VI. Discovery Issues

Lastly, the claimant argues that the government's refusal to engage in discovery justifies dismissal of the action. I disagree. However egregious a failure to abide by the discovery rules may be, the court is obliged to consider the appropriateness of alternative sanctions; dismissal is a drastic sanction, reserved for drastic cases, and should only be ordered where no lesser sanction is adequate. *See Poulis v. State Farm and Fire Casualty Co.*, 747 F.2d 863, 867-68 (3d Cir.1984).

Further, I do not find that plaintiff's alleged interference with discovery warrants sanctions. The claimant is primarily complaining that the government has not permitted discovery with respect to statements made by, and it has not permitted the deposition of, Joseph Mazacco. Mr. Mazacco is the government's chief informant in connection with what is now a pending criminal case. Thus, the government's refusal to permit discovery was not based upon any dilatoriness, willfulness or bad faith, but upon its concern over the outcome of criminal proceedings. Accordingly, the claimant's motion for dismissal of the Verified Complaint on the grounds that the government has not engaged in appropriate discovery is hereby denied.

VII. Government's Motion for a Stay

The government has moved for a stay of these proceedings pending trial of a criminal action in the

Southern District of Florida pursuant to 21 U.S.C. 881(i). This section provides that "[t]he filing of an indictment alleging a violation of this subchapter . . . which is also related to a civil forfeiture proceeding under this section shall upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding." 21 U.S.C. § 881(i). In deciding whether a stay is appropriate, the court should exercise its discretion and determine whether the hardships to the claimant are outweighed by the government's interest in avoiding civil discovery. *See United States v. Mellon Bank, N.A.*, 545 F.2d 869, 872-73 (3d Cir.1976).

I find that the balance weighs in favor of granting the government's request for a stay. The government has demonstrated good cause in support of its request; this is evidenced by the claimant's insistence for disclosure of the statements made by Mr. Mazacco, the government's informant, and the government's refusal to produce same. *See United States v. One Single Family Residence*, 710 F.Supp. 1351, 1352 (S.D.Fla.1989) (government satisfied its burden of demonstrating good cause by representing that "civil discovery would substantially interfere with and prejudice the prosecution of the criminal action, because civil discovery is substantially more comprehensive and wide-reaching than is criminal discovery"). It does not appear that the hardship to the claimant is severe, as she has been permitted to reside at the premises under an occupancy agreement. Although the claimant complains that she is not indicted and the government is not seeking to forfeit *her* interest in the property in the criminal proceedings, stays are appropriate whether or not the same parties are involved in the criminal and civil litiga-

tion, provided the actions concern related transactions. *See Larouche Campaign v. FBI*, 106 F.R.D. 500, 501 (D.Mass.1985).

Accordingly, I shall grant the government's request for a stay of this civil proceeding pending trial of the criminal proceeding in the Southern District of Florida.

VIII. Conclusion

For all the reasons set forth above, I deny the claimant's motion to dismiss the Verified Complaint and I grant the government's request for a stay of this case pending the trial in the criminal proceeding.

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEYHON. HAROLD A. ACKERMAN
Civil Action No. 89-1411

UNITED STATES OF AMERICA, PLAINTIFF

v.

A PARCEL OF LAND, BUILDINGS, APPURTENANCES, AND
IMPROVEMENTS KNOWN AS 92 BUENA VISTA AVE.,
RUMSON, NEW JERSEY, DEFENDANT

ORDER

[Filed Jul. 13, 1990]

This matter, having been brought before this Court upon the motion of the claimant, Ms. Beth Ann Goodwin, for dismissal of the complaint and for summary judgment; and the United States of America having opposed the claimant's motions on all grounds and having cross-moved for a stay of discovery and/or a stay of this action; and the Court having duly considered the papers submitted in support of and in opposition to said motions, as well as the oral arguments of counsel; and for the reasons stated in this Court's Opinion issued from the bench on May 29, 1990, and filed on June 1, 1990, as well as for the reasons expressed in the accompanying Opinion relating to the certification of this matter for appeal;

IT IS on this 13th day of July, 1990,

ORDERED that the claimant's motions to dismiss the complaint and for summary judgment are hereby denied in all respects; and it is further,

ORDERED that the motion of the United States of America for a stay of all proceedings herein pending trial of indictment no. 90-6055-CR-GONZALEZ(S) in the United States District Court for the Southern District of Florida is granted. Should the defendant Joseph Brenna's trial be severed from the trial of the remaining defendants because of his fugitive status, the claimant may move for relief from the stay of this matter after the trial of the remaining defendants; and it is further,

ORDERED that the claimant's application pursuant to 28 U.S.C. § 1292(b) to certify for appeal the issues in this Court's Opinion of June 1, 1990, relating to the claimant's motions to dismiss the complaint and for summary judgment is granted.

/s/ Harold A. Ackerman
HAROLD A. ACKERMAN
U.S.D.J.

APPENDIX D

UNITED STATES DISTRICT COURT
D. NEW JERSEY

Civ. A. No. 89-1411

UNITED STATES OF AMERICA, PLAINTIFF

*v.*A PARCEL OF LAND, BUILDINGS, APPURTENANCES, AND
IMPROVEMENTS KNOWN AS 92 BUENA VISTA AVE.,
RUMSON, NEW JERSEY, DEFENDANT

July 13, 1990

Order Aug. 7, 1990

OPINION ON REQUEST FOR CERTIFICATION
TO APPEAL

HAROLD A. ACKERMAN, District Judge.

The United States of America has brought this civil forfeiture action, pursuant to 21 U.S.C. § 881, concerning property known as 92 Buena Vista Avenue, Rumson, New Jersey, (hereinafter the "premises"). Presently before the Court is an application by the claimant, Ms. Beth Ann Goodwin, for certification of this Court's denial of her summary judgment motion and grant of a stay in favor of the government.

The claimant, Ms. Goodwin, previously moved to dismiss the complaint and for summary judgment. Her motion for dismissal of the complaint was based upon the grounds that (1) the seizure of her home was unconstitutional, because there was no probable cause and no preseizure hearing; (2) the property is not subject to forfeiture, because Ms. Goodwin is an "innocent owner"; (3) the verified complaint was based, at least in part, on immunized testimony; (4) the government unduly delayed in the seizure and/or is barred by the statute of limitations; and (5) the government's refusal to engage in discovery justified dismissal of this action. The government opposed the claimant's motion on all grounds and cross-moved for a stay on discovery and/or a stay of this action.

By an Opinion issued from the bench on May 29, 1990, and filed on or about June 1, 1990, 738 F.Supp. 854,¹ this Court held that the claimant's motion should be denied in all respects and that the government's request for a stay should be granted. The claimant has applied to this Court requesting that the Order denying her summary judgment motion contain a certification permitting her the right to an appeal, pursuant to 28 U.S.C. § 1292(b), subject to the Court of Appeals' discretion. With regard to interlocutory decisions by district courts, 28 U.S.C. § 1292(b) provides:

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opin-

¹ Citations to this Opinion shall hereinafter be referred to as "Op." followed by the appropriate page number.

ion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he [sic] shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order. . . .

28 U.S.C. § 1292(b) (emphasis supplied).

The Third Circuit set forth the standards governing certification of interlocutory appeals under this provision in *Katz v. Carte Blanche Corp.*, 496 F.2d 747, 754 (3d Cir.) (*en banc*), cert. denied, 419 U.S. 885, 95 S.Ct. 152, 42 L.Ed.2d 125 (1974). According to *Katz*, the certification of a matter for appeal is discretionary. *Id.* at 754. Each of the three criteria for certification—that the matter (1) involve a controlling question of law; (2) offer substantial ground for difference of opinion as to its correctness; and (3) materially advance the ultimate termination of the litigation—must be satisfied. *Id.* In addition, “a district court must keep in mind the Third Circuit’s admonition that section 1292(b) ‘is to be used only in exceptional cases where an intermediate appeal may avoid protracted and expensive litigation.’” *Mattioni, Mattioni & Mattioni, Ltd., v. Ecological Shipping Corp.*, 530 F.Supp. 910, 917 (E.D. Pa.1981).

The first criteria is clearly satisfied here. All of the significant issues involved in this case have been resolved as a matter of law. The issues are also controlling and some involve constitutional questions. See *Johnson v. Alldredge*, 488 F.2d 820, 822-23 (3d Cir.), cert. denied, 419 U.S. 882, 95 S.Ct. 148, 42 L.Ed.2d 122 (1974) (questions on immunity, which are purely legal in nature, are appropriate for resolution by way of an interlocutory appeal); *Mattioni, supra*, at 917

(an issue is controlling where “if erroneous, [it] would be reversible error on final appeal”); cf. *Von Bulow by Auersperg v. Von Bulow*, 634 F.Supp. 1284, 1312-13 (S.D.N.Y.1986), *aff’d*, 811 F.2d 136 (2d Cir.), cert. denied, 481 U.S. 1015, 107 S.Ct. 1891, 95 L.Ed.2d 498 (1987) (certification is not appropriate with respect to a ruling which does not involve a question of law but an exercise of discretion).

In addition, while I do not for a moment doubt the correctness of the decision I rendered, I recognize that substantial grounds may exist for a difference of opinion. There are few cases discussing the constitutionality of the civil forfeiture of a residence in the absence of a pre-seizure hearing and the courts have taken differing approaches in resolving this issue. Compare *United States v. Property at 4492 S. Livonia Road, Livonia, New York*, 889 F.2d 1258, 1265 (2d Cir.1989), *reh’g denied*, 897 F.2d 659 (2d Cir.1990), with *United States v. A Single Family Residence and Real Property Located at 900 Rio Vista Blvd., Ft. Lauderdale, Fl.*, 803 F.2d 625, 632 (11th Cir.1986). A pronouncement by the Third Circuit as to the appropriate approach to take in resolving the constitutional questions implicated in such cases would certainly provide instructive precedent.

In addition, there is, apparently, no authority construing the innocent owner defense in a situation such as the present case, namely, where probable cause exists to believe that the property subject to civil forfeiture was purchased with drug proceeds and the claimant did not pay fair value. While there are a number of authorities supporting this Court’s conclusion that the innocent owner defense does not apply in such a case, (see *United States v. One Single Family Residence, Miami*, 683 F.Supp. 783, 788 (S.D.Fla.

1988) and 738 F.Supp. at 859-61), there are authorities which could, arguably, support a contrary conclusion. See, e.g., *United States v. Four Million, Two Hundred Fifty-Five Thous.*, 762 F.2d 895, 905-06 (11th Cir.1985), cert. denied, 474 U.S. 1056, 106 S.Ct. 795, 88 L.Ed.2d 772 (1986) (indicating that the purpose of the innocent owner defense is to ameliorate the harshness of the rule that all proceeds from drug transactions are subject to forfeiture by requiring knowledge of the drug dealings). Further, with respect to the government's alleged undue delay in the seizure, I recognize that substantial grounds for difference of opinion may exist on this issue as well. Compare 738 F.Supp. at 861-62, with *United States v. Kemp*, 690 F.2d 397, 401 & n. 5 (4th Cir.1982). Thus, the second criteria for grant of certification is satisfied.²

Lastly, the third criteria is satisfied. Resolution of any one of a number of issues raised by the claimant in her favor could result in an immediate dismissal of this action.³ On the other hand, this case has

² Although the question of whether testimony compelled under a grant of immunity may be used in civil forfeiture proceedings is also somewhat novel, I found that the government had established probable cause for the forfeiture by independent means, and I did not fully consider this issue. See 738 F.Supp. at 861 & n. 6.

³ While reversal of this Court's decision could result in dismissal of this action, the denial of the claimant's summary judgment motion in this case verges on a final judgment for the government. In rendering my previous decision, I found that the government had established probable cause to support the forfeiture and that the claimant is not entitled to invoke the innocent owner defense. Thus, the case has effectively been decided in favor of the government, unless the claimant can prove, by a preponderance of the evidence, that the prem-

been stayed pending the criminal trial of Mr. Brenna who is now a fugitive and it is difficult to predict, given Mr. Brenna's fugitive status, how long it will be until the stay in this matter may be lifted. There is no apparent reason why the thorny and controlling legal issues posed by this case should not be presented to the Court of Appeals during the course of the stay of this matter. Indeed, this Court's grant of the stay, together with Mr. Brenna's fugitive status and the nature of the controlling legal issues implicated here renders this case "exceptional" and thus appropriate for certification. Accordingly, for all the foregoing reasons, I shall exercise my discretion and certify the issues raised by the claimant's summary judgment motion, as discussed above, for appeal pursuant to 28 U.S.C. § 1292(b).

ORDER

This matter, having been brought before the Court upon the motion of claimant, Ms. Beth Ann Goodwin, for dismissal of the Complaint and for summary judgment; and the United States of America having opposed said motions on all grounds and having cross-moved for a stay of discovery and/or stay of this action; and the Court having duly considered the papers submitted in support of and in opposition to said motions, as well as the oral arguments of counsel; and for the reasons stated in this Court's Opinion issued from the bench on May 29, 1990 and filed on June 1, 1990, as well as for the reasons expressed in the Opinion filed on July 13, 1990, relating to the certification of this matter for appeal; and it having come to the Court's attention that this Court's prior Order, dated

ises were not purchased with drug proceeds. See 738 F.Supp. at 857, 857 & 861 n. 5.

July 13, 1990 (concerning said motions and the request for certification), was not forwarded to claimant's counsel in time for claimant's counsel to file a petition for permission to appeal within ten days and in compliance with 28 U.S.C. § 1292(b); and for good cause shown,

ORDERED that this Court's prior Order dated July 13, 1990, is hereby vacated; and it is further,

ORDERED that the claimant's motions to dismiss the complaint and for summary judgment are hereby denied in all respects; and it is further,

ORDERED that the motion of the United States of America for a stay of this action pending trial of indictment no 90-6055-CR-GONZALEZ(S) in the United States District Court for the Southern District of Florida is granted. Should the defendant Joseph Brenna's trial be severed from the trial of the remaining defendants because of his fugitive status, the claimant may move for relief from the stay of this matter after the trial of the remaining defendants in that action; and it is further,

ORDERED that the claimant's application pursuant to 28 U.S.C. § 1292(b) to certify for appeal the issues in this Court's Opinion of June 1, 1990 relating to the claimant's motions to dismiss the complaint and for summary judgment is granted, on the grounds that such an appeal involves controlling questions of law as to which there are substantial grounds for difference of opinion and an immediate appeal may materially advance the ultimate termination of the litigation. The controlling questions of law are:

(1) Whether the seizure of claimant's home was unconstitutional because there was no pre-seizure

hearing and, if so, whether the forfeiture proceedings involving said home should be dismissed as a result;

(2) Whether an innocent owner defense may be asserted by a person who is not a bona fide purchaser for value concerning a parcel of land where the government has established probable cause to believe that the parcel of land was purchased with monies traceable to drug proceeds;

(3) Whether the verified complaint in this action was based, in part, upon immunized testimony and if so, whether the forfeiture proceedings must be dismissed as a result; and

(4) Whether the government's claims in this action are barred by the applicable statute of limitations and/or undue delay.

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 90-5823

U.S.A.

vs.

A PARCEL OF LAND, BETH ANN GOODWIN,
APPELLANT

SUR PETITION FOR REHEARING

Present: SLOVITER, *Chief Judge*, BECKER,
STAPLETON, MANSMANN, GREENBERG,
HUTCHINSON, SCIRICA, COWEN, NYGAARD,
and ROTH, *Circuit Judges*, and O'NEILL.*

The petition for rehearing filed by appellee in the above entitled case having been submitted to the judges who participated in the decision of this court and to all other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

* District Judge O'Neill voted only as to panel rehearing.

Judges Becker, Stapleton, Cowen and Roth would have granted rehearing.

BY THE COURT,

/s/ Carol Los Mansmann
Circuit Judge

Dated: August 13, 1991

APPENDIX F

Section 511 of the Controlled Substances Act of 1970, 21 U.S.C. 881, provides:

§ 881. Forfeitures.

(a) Subject property

The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this subchapter.

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this subchapter.

(3) All property which is used, or intended for use, as a container for property described in paragraph (1), (2), or (9).

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1), (2), or (9), except that—

(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear

that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this subchapter or subchapter II of this chapter;

(B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any State; and

(C) no conveyance shall be forfeited under this paragraph to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge, consent, or willful blindness of the owner.

(5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this subchapter.

(6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter, except that no

property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(7) All real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this subchapter punishable by more than one year's imprisonment, except that no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(8) All controlled substances which have been possessed in violation of this subchapter.

(9) All listed chemicals, all drug manufacturing equipment, all tableting machines, all encapsulating machines, and all gelatin capsules, which have been imported, exported, manufactured, possessed, distributed, or intended to be distributed, imported, or exported, in violation of a felony provision of this subchapter or subchapter II of this chapter.

(b) Seizure pursuant to Supplemental Rules for Certain Admiralty and Maritime Claims; issuance of warrant authorizing seizure

Any property subject to civil forfeiture to the United States under this subchapter may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

(1) the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the United States in a criminal injunction or forfeiture proceeding under this subchapter;

(3) the Attorney General has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) the Attorney General has probable cause to believe that the property is subject to civil forfeiture under this subchapter.

In the event of seizure pursuant to paragraph (3) or (4) of this subsection, proceedings under subsection (d) of this section shall be instituted promptly.

The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the

same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.

(c) Custody of Attorney General

Property taken or detained under this section shall not be repleviable [sic], but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under any of the provisions of this subchapter, the Attorney General may—

- (1) place the property under seal;
- (2) remove the property to a place designated by him; or
- (3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

(d) Other laws and proceedings applicable

The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under any of the provisions of this subchapter, insofar as applicable and not inconsistent with the provisions hereof; except that such duties as are imposed upon the customs

officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this subchapter by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

(e) Disposition of forfeited property

(1) Whenever property is civilly or criminally forfeited under this subchapter the Attorney General may—

(A) retain the property for official use or, in the manner provided with respect to transfers under section 1616a of title 19, transfer the property to any Federal agency or to any State or local law enforcement agency which participated directly in the seizure or forfeiture of the property;

(B) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public;

(C) require that the General Services Administration take custody of the property and dispose of it in accordance with law;

(D) forward it to the Bureau of Narcotics and Dangerous Drugs for disposition (including delivery for medical or scientific use to any Federal or State agency under regulations of the Attorney General); or

(E) transfer the forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or

indirectly in the seizure or forfeiture of the property, if such a transfer—

(i) has been agreed to by the Secretary of State;

(ii) is authorized in an international agreement between the United States and the foreign country; and

(iii) is made to a country which, if applicable, has been certified under section 2291(h) of title 22.

(2)(A) The proceeds from any sale under subparagraph (B) of paragraph (1) and any moneys forfeited under this subchapter shall be used to pay—

(i) all property expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising and court costs; and

(ii) awards of up to \$100,000 to any individual who provides original information which leads to the arrest and conviction of a person who kills or kidnaps a Federal drug law enforcement agent.

Any award paid for information concerning the killing or kidnapping of a Federal drug law enforcement agent, as provided in clause (ii), shall be paid at the discretion of the Attorney General.

(B) The Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of title 28, any amounts of such moneys and proceeds remaining after payment of the expenses provided in subparagraph (A), except that, with respect to forfeitures conducted by the Postal Service, the

Postal Service shall deposit in the Postal Service Fund, under section 2003(b)(7) of title 39, such moneys and proceeds.

(3) The Attorney General shall assure that any property transferred to a State or local law enforcement agency under paragraph (1)(A)—

(A) has a value that bears a reasonable relationship to the degree of direct participation of the State or local agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort with respect to the violation of law on which the forfeiture is based; and

(B) will serve to encourage further cooperation between the recipient State or local agency and Federal law enforcement agencies.

(f) Forfeiture and destruction of schedule I and II substances

(1) All controlled substances in schedule I or II that are possessed, transferred, sold, or offered for sale in violation of the provisions of this subchapter shall be deemed contraband and seized and summarily forfeited to the United States. Similarly, all substances in schedule I or II, which are seized or come into the possession of the United States, the owners of which are unknown, shall be deemed contraband and summarily forfeited to the United States.

(2) The Attorney General may direct the destruction of all controlled substances in schedule I or II seized for violation of this subchapter un-

der such circumstances as the Attorney General may deem necessary.

(g) Plants

(1) All species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this subchapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the United States.

(2) The failure, upon demand by the Attorney General or his duly authorized agent, of the person in occupancy or in control of land or premises upon which such species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, shall constitute authority for the seizure and forfeiture.

(3) The Attorney General, or his duly authorized agent, shall have authority to enter upon any lands, or into any dwelling pursuant to a search warrant, to cut, harvest, carry off, or destroy such plants.

(h) Vesting of title in United States

All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

(i) Stay of civil forfeiture proceedings

The filing of an indictment or information alleging a violation of this subchapter or subchapter II of this chapter, or a violation of State or

local law that could have been charged under this subchapter or subchapter II of this chapter, which is also related to a civil forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding.

(j) Venue

In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

(l) Agreement between Attorney General and Postal Service for performance of functions

The functions of the Attorney General under this section shall be carried out by the Postal Service pursuant to such agreement as may be entered into between the Attorney General and the Postal Service.